

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 09-41069

WOODWARD GARDENS, L.L.C.,

Chapter 11

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING DEBTOR'S MOTION FOR ORDER
HOLDING FIFTH THIRD BANK IN CONTEMPT**

This case is before the Court on Debtor's "Verified Motion for Order Holding Fifth Third Bank in Contempt of Court and Related Relief," filed on March 17, 2009 (Docket # 27). The motion seeks an order holding Fifth Third Bank in contempt for its "failure to comply with Debtor's Subpoena, directing Fifth Third Bank to immediately produce all documents responsive to the Subpoena," and granting Debtor "such other further relief as the Court deems just and equitable." The Court concludes that a hearing on this motion is not necessary.

There is no indication in the record of this case that Debtor and its counsel had any authority to issue and serve a subpoena on Fifth Third Bank. In order for the subpoena at issue to be valid and enforceable, Debtor was required to first obtain an order under Fed.R.Bankr.P. 2004 authorizing it to subpoena Fifth Third Bank for documents, or to conduct other discovery of Fifth Third Bank. Similarly, under E.D. Mich. L.B.R. 7026-3, "[d]iscovery in a contested matter is permitted only upon a court order for cause shown." Because Debtor failed to obtain an order authorizing it to subpoena Fifth Third Bank, Debtor's contempt motion must be denied.

IT IS ORDERED that Debtor's "Verified Motion for Order Holding Fifth Third Bank in Contempt of Court and Related Relief," (Docket # 27), is DENIED.

Signed on March 19, 2009

/s/ Thomas J. Tucker

**Thomas J. Tucker
United States Bankruptcy Judge**